

1        **AGREEMENT FOR ARCHITECTURAL/ENGINEERING CONSULTANT SERVICES**

2                THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
3 between the County of Fresno, a political subdivision of the State of California, (hereinafter called  
4 "COUNTY"), and    *[Consultant's firm name]* \_\_\_\_\_, Architect /  
5 Engineer, (A [State] Corporation / Partnership), *[Individual's name]* \_\_\_\_\_ a sole  
6 proprietor doing business as *[Firm name]*, *[address]* \_\_\_\_\_, (hereinafter  
7 called "CONSULTANT").

8                                **W I T N E S S E T H:**

9                WHEREAS, COUNTY plans to construct a new facility for the New Central Library,  
10 hereinafter called the project; and

11                WHEREAS, said CONSULTANT is qualified and willing to provide the COUNTY the  
12 professional, architectural and engineering services needed for this project.

13                WHEREAS, COUNTY desires to retain a consultant architect / engineer to prepare plans,  
14 specifications, opinion of probable construction cost and other documents required for the project; and

15                WHEREAS, said consultant architect/engineer has been selected in accordance with  
16 COUNTY's Ordinance Code Chapter 4.10 on the selection of architects, engineers, and other  
17 professionals to provide the engineering services necessary for the Project.

18                NOW, THEREFORE, the parties hereto have and by these presents do agree as follows:

19        **I.        CONTRACTING WITH CONSULTANT: BASIC PARAMETERS**

20                A. The COUNTY hereby contracts with the CONSULTANT as an independent contractor to  
21 provide consultant services as required for the project. Said services are described in Article II and  
22 enumerated in Article III herein.

23                B. The CONSULTANT shall retain other subconsultants as CONSULTANT requires to assist  
24 in completing the work. All subconsultants used by CONSULTANT shall be approved by the  
25 COUNTY's Director of the Department of Public Works and Planning or his/her designee before they  
26 are retained by the CONSULTANT, which approval shall not be unreasonably withheld.

1 Subconsultants listed in Exhibit A, attached hereto and incorporated herein, shall be considered as  
2 approved by the COUNTY. Should CONSULTANT retain any subconsultants, compensation to be  
3 paid to CONSULTANT under Article V below, shall not be increased.

4 C. The CONSULTANT's services shall be performed as expeditiously as is consistent with  
5 professional skill and the orderly progress of the work, based on project schedules as mutually agreed  
6 by the COUNTY and the CONSULTANT.

7 D. The CONSULTANT and affiliated subconsultants shall not submit bids, or subbids, for  
8 the contract construction phase of the project for which CONSULTANT provides services hereunder.

9 The CONSULTANT and its subconsultants, and all other service providers, shall not provide any  
10 project-related services for, or receive any project-related compensation from any construction  
11 contractor, subcontractor or service provider awarded a construction contract for all or any portion of  
12 the for which CONSULTANT provides services hereunder. The CONSULTANT and its  
13 subconsultants, and all other service providers, may provide services for, and receive compensation  
14 from a construction contractor, subcontractor or service provider who has been awarded a construction  
15 contract for all or any portion of the project, provided that any such services which are rendered, and  
16 any compensation which is received therefor relates to work outside the scope of this Agreement.

17 E. The contact person(s) for the CONSULTANT shall be:

18 \_\_\_\_\_ telephone \_\_\_\_\_, fax \_\_\_\_\_, email, \_\_\_\_\_, web \_\_\_\_\_.

19 **II. DESCRIPTION OF THE WORK COVERED BY THIS AGREEMENT:**

20 The work covered by this Agreement is for the consultant services necessary for the planning  
21 and construction of a facility for the Fresno County New Central Library. The project will have two  
22 components. Component I will involve conducting a needs assessment; financing sources  
23 investigation; reviewing and evaluating an existing building program for reduction of overall cost of  
24 the project; coordination with other museums and agencies in the art and cultural district regarding  
25 the library master plan; conceptual design and site plan, schematic designs, financial study and project  
26 estimate. Component II will involve providing design development and construction documents, and

1 tasks overseeing bidding and administration, construction and post construction phases.

### 2 **III. SERVICES OF THE CONSULTANT**

#### 3 General Requirements:

4 Throughout the duration of the project, the CONSULTANT shall communicate and meet with  
5 COUNTY's project committee and staff as often as necessary (a minimum of one meeting every two  
6 weeks during Component I) in order to verify, refine, and complete the project requirements and  
7 review the progress of the project. All meetings will be held in Fresno. CONSULTANT shall prepare  
8 brief minutes recording decisions and action items of the meetings attended and shall provide a copy  
9 of all such minutes to the COUNTY. CONSULTANT shall develop and maintain a project schedule  
10 and status report that will be updated and submitted to the COUNTY on a bi-monthly basis. The  
11 CONSULTANT shall monitor and keep the COUNTY informed regarding the impact of design issues  
12 on the project budget. Upon the request of the COUNTY, CONSULTANT shall incorporate into the  
13 design such reasonable changes as the COUNTY deems appropriate as a result of the COUNTY's  
14 review processes and impact of the budget or opinion of probable construction cost. If  
15 CONSULTANT disagrees with the COUNTY's request, such disagreement must be registered in  
16 writing and the COUNTY will attempt to reconcile such disagreement. If it is impossible to reconcile,  
17 the written disagreement will become a part of the project record. However, CONSULTANT shall  
18 then comply with the COUNTY's request.

19 All personnel of the CONSULTANT assigned to this Project shall be approved by the  
20 COUNTY Representative prior to commencement of consultant services. If at any time during this  
21 Project, it is determined by COUNTY that performance of any personnel (including approved  
22 personnel) is not acceptable, COUNTY may order in writing, without stating cause, that such person  
23 or persons be removed from the Project and replaced. Names and qualifications of proposed  
24 replacement personnel, if requested, shall be made within a period not to exceed five (5) working days  
25 from such order and be activated within ten (10) days of request. Names of proposed replacement  
26 personnel, if requested, shall be made within a period not to exceed five (5) working days from such

1 order and be activated within ten (10) days of request.

2 The COUNTY may take up to four (4) weeks to review and comment on final draft submittals  
3 for phases 1 through 5.

4 At the completion of each phase of the project, the CONSULTANT shall not proceed to the  
5 next phase unless expressly authorized to do so by the COUNTY.

6 The services required of the CONSULTANT may include, but not necessarily be limited to  
7 the following phases of work:

8 COMPONENT I

9 A. Phase 1, Needs Assessment / Financing Sources Investigation

10 The Consultant shall:

11 1. As an option prepare a Needs Assessment study for the new proposed library. The  
12 Assessment shall comply with the requirements of the current Library Bond act of California.

13 2. Investigate financing sources to identify public funding sources such as grants, possible  
14 untapped revenue streams, loans or debt financing instruments outside the boundaries of typic public  
15 agency financing vehicles, private financing methods, or other methods of raising funds for the  
16 project.

17 3. As an option prepare a Plan of Services report. The report shall comply with the  
18 requirements of the current Library Bond act of California.

19 4. As an extra service participate in field trips with the project committee to interview  
20 other public libraries that have recently completed. Assess information gathered and prepare a report  
21 of findings.

22 5. Submit draft report to the project committee for review and comments. Review  
23 comments and make corrections to the document.

24 B. Phase 2, Building Program / Conceptual Design and Site Plan

25 The CONSULTANT shall:

26 1. Review and evaluate an existing building program that includes recommendations for

1 reduction of overall cost of the project, information on square footage requirements, a breakdown and  
2 summary of spaces, adjacencies, and proximities, list and explanation of building area and site needs  
3 plan illustrating ultimate development and interim phasing. The review and evaluation of the building  
4 program shall include, but not be limited to consideration of the following:

5 a. The facility's exterior needs and requirements, such as utilities and services  
6 infrastructure, parking, outdoor lighting and security.

7 b. Interior components such as library equipment and furnishings, office and other  
8 functional area requirements, conceptual furniture layout with preferences, equipment requirements,  
9 mechanical and electrical system requirements and space needs, and maintenance expectations.

10 c. Options for permanent and interim tenants within the facility.

11 d. Off-peak loading, energy efficiencies, natural lighting, and suitable building  
12 components.

13 e. A project development timeline and a document production schedule.

14 2. Gather input and coordinate with other museums and agencies in the art and cultural  
15 districts regarding the library site plan.

16 3. Coordinate with the City of Fresno's Historical Preservation Department for  
17 architectural compatibility with their guidelines set for the area of the proposed location of the new  
18 library.

19 4. Address the parking needs of the new library at available sites contiguous to the  
20 proposed location of the new library and opportunities for joint use with other agencies in the Arts and  
21 Cultural Districts.

22 5. Prepare a Conceptual Design and Site Plan

23 6. Submit ten (10) copies of the building program and conceptual design and site plan for  
24 review by the COUNTY.

25 7. Review and make corrections to the document as necessary after review by project  
26 committee.

1 8. Conduct up to six community workshops for community input.

2 9. Prepare and present a report of the updated building program and conceptual design  
3 and site plan to the project committee and/or the Board of Supervisors.

4 10. Not proceed with the next Phase unless expressly authorized in writing by COUNTY.

5 C. Phase 3, Schematic Design / Financing Study / Project Estimate:

6 The Consultant shall:

7 1. Develop project parameters in concert with the COUNTY's project committee  
8 recommendations and concerns. Confer with the project committee on construction system  
9 component preferences, scheduling, bidding and contracting strategies.

10 2. Review and evaluate proposed sites through visual observation and archive document  
11 research to coordinate the development of on-site infrastructure such as electrical, mechanical,  
12 plumbing, communication, telephone, and computer systems. Document the existing utility system  
13 configuration and possible interference with or impact on the proposed improvements. Assess all on  
14 and off-site development needs.

15 3. Identify and document all regulatory compliance measures and approval processes  
16 required to complete this project.

17 4. Assist in the preparation of grants and other financing applications.

18 5. Develop schematic design plans, sketches and/or drawings, comparison of actual  
19 footage versus programmed square footage, and reports consisting of conceptual illustrations with  
20 continuing input and review by the project committee.

21 6. Prepare a schematic design consisting of floor plans with square footage and rough  
22 dimensions, and illustrate the function of the rooms, cross sections and exterior elevations. More than  
23 one proposed floor plan may be required. Also prepare a site plan showing on-site traffic circulation  
24 and its impact on the district traffic circulation.

25 7. Prepare a Plan of Services.

26 8. Prepare an independently verified schematic design opinion of probable construction

cost. Include in a report the construction cost, budget estimates, and project timeline for the proposed development. The report shall define a cost of major project components and provide cost saving measures.

9. Provide six (6) printed copies of selected documents including plans, cost estimates, outline specifications and design data to the COUNTY for value engineering review. Review and analyze findings and alternatives provided by the COUNTY and/or value engineering consultant.

10. Prepare estimates comparing different construction systems, reports on cost benefit analysis and life-cycle costs and justify and/or substantiate recommended course of action. Prepare cost estimates for library furnishings and equipment.

11. Review and analyze a COUNTY provided schematic design opinion of probable construction cost. Participate in a meeting with the project committee to reconcile any differences between CONSULTANT's independent opinion of probable construction cost and the COUNTY provided opinion of probable construction cost. Make corrections and changes as directed at no additional cost to the County.

12. Prepare a financial study, incorporate findings from the needs assessment and financing sources report and provide an assessment as to whether the vision of the facility can be met with available funding sources. The financial study shall be comprehensive in nature, providing alternatives and recommend actions.

13. Prepare presentation quality colored site and floor plans, exterior elevations and street level perspective rendering of building entrance. Work products shall meet minimum requirements of the current State Library Bond Act program in effect that may be the source of funding. Also prepare an aerial rendering of proposed site configuration.

14. Prepare a list and schedule of recommended library equipment required for the facility.

15. Preparation of proposals for networks, library technologies, and information technology systems.

16. Prepare Library Bond Act applications

1 17. Prepare conceptual library and office furniture layout utilizing COUNTY provided area  
2 standards. Review and verify stack and library layout provided in the existing building program.

3 18. Coordinate and integrate with COUNTY's contracted office furnishings consultant to  
4 prepare a list and schedule of recommended furnishings including stacking, and library equipment and  
5 furnishings.

6 19. Submit to the COUNTY thirty-five (35) hard copies and one (1) electronic copy of the  
7 needs assessment, building program, final schematic design, financial study and project cost estimate  
8 report. The financial study and project cost estimate report shall be bound, in color and of  
9 presentation quality. The copies shall be submitted to the COUNTY ten (10) calendar days prior to  
10 the Board of Supervisors meeting. Meet with project committee to review submitted documents.

11 20. Make a formal Power Point presentation before the Board of Supervisors of the  
12 schematic design, renderings, financial study and project cost report. Attend and participate in a  
13 rehearsal prior to presentation of the project before the Board of Supervisors.

14 21. Continue to incorporate into the design changes required through the time of project  
15 approval of the schematic design and make changes to the presentation as directed by the COUNTY.

16 22. Not proceed with the next Phase unless expressly authorized in writing by COUNTY.

## 17 COMPONENT II

### 18 D. Phase 4, Design Development:

19 The CONSULTANT shall:

20 1. Develop project parameters in concert with the COUNTY's project committee's  
21 recommendations and concerns. Confer with the project committee on construction system  
22 component preferences, scheduling, bidding and contracting strategies.

23 2. Prepare in this phase of work (or in a subsequent phase if so directed by the COUNTY  
24 representative) all data necessary to comply with all review agencies, and COUNTY permits and land  
25 use requirements within the project schedule.

26 3. Research and analyze all applicable codes to ensure compliance.



1                   4. Comply with the design criteria established in attached Exhibit 1.

2                   5. Prepare the design development (preliminary) drawings and preliminary specifications.

3           Plans shall be prepared on a CAD system acceptable to the County (such as Auto CAD Version 2004  
4           or DataCAD Version 10) and submitted to the County on 30" X 42" (maximum size) sheets, or other  
5           size approved by COUNTY. All text documents shall be prepared on electronic files capable of being  
6           opened by and fully compatible with Microsoft Word or Word Perfect software and submitted to  
7           County on 8 ½" X 11" pages. The preliminary design shall consists of floor plans, (exterior)  
8           elevations, (interior) cross sections, landscaping plan, site and grading plans, site survey and other  
9           drawings to scale showing the location of walls, doors, windows, equipment fixtures, and other  
10          necessary items together with the requirements for the electrical, data, telephone, heating, plumbing,  
11          air-conditioning, and other work necessary to complete the project. This preliminary design submittal  
12          shall also include the fixture cuts for all pieces of equipment included in the design.

13                  6. Prepare a shelving furniture and equipment layout to determine the need for new  
14          furniture and equipment by the New Central Library. Fixed equipment shall be included in the opinion  
15          of probable construction cost.

16                  7. Identify and define distribution systems and performance criteria for mechanical and  
17          electrical system components, library technologies, and network systems.

18                  8. Prepare a detailed and independently verified design development opinion of probable  
19          construction cost that shall identify, in CSI/UCI 16 division format, the building and site development  
20          components and requirements of the project. The estimated cost of each building, on-site  
21          improvements and off-site improvements shall be prepared along with a summary showing the total  
22          project cost.

23                  9. The opinion of probable construction cost shall be projected to the midpoint of the  
24          probable construction and shall include material and labor unit costs, overhead, profit, insurance,  
25          taxes, general requirements, supervision, and difficulty factors and shall be submitted in the CSI/UCI  
26          16 division format.

1           10. The opinion of probable construction cost shall identify construction cost escalation  
2 and design contingency amounts, which must be approved by the COUNTY prior to their inclusion  
3 in the opinion of probable construction cost. The opinion of probable construction cost shall assume  
4 a competitive bid process within the Fresno County area.

5           11. Review and analyze a County provided design development opinion of probable  
6 construction cost. Participate in a meeting with the project committee to reconcile any differences  
7 between the Consultant provided opinion of probable construction and the one provided by the  
8 COUNTY's independent consultant cost estimator.

9           12. Prepare applications, and assist the COUNTY in submitting applications and  
10 expediting agency review processing as may be required for this project. This will include developing  
11 all data necessary to complete applications and the processing of a conditional use permit (if required),  
12 environmental documents (if required), site plan review, grading and drainage and building permits.  
13 Provide necessary document printing [up to fifty (50) copies] including but not limited to site plan  
14 and survey, grading, landscape and irrigation plans and building exterior elevations.

15           13. As directed by the COUNTY's staff, attend, participate and make graphic and oral  
16 presentations at all public hearings. Prepare color renderings of site plans, elevations, birds-eye  
17 perspective of full facility and ground level entry perspective.

18           14. Submit to the COUNTY fifteen (15) sets of completed design development  
19 (preliminary) plans, specifications fixture cuts, reports and opinion of probable construction cost for  
20 the review, comment and evaluation by the project committee and responsible fire prevention bureau.

21           15. Review and explain in both a verbal and a written report the full detail of all elements  
22 to be included in the project (including those elements not shown but included in the drawings and  
23 outline specifications) with the project committee, and Department of Public Works and Planning  
24 staff.

25           16. Continue to incorporate into the design in the succeeding phase of the work, the  
26 changes identified from the project approval of the design development (preliminary design) at no

1 additional cost to the COUNTY.

2 17. Not proceed with the next Phase unless expressly authorized in writing by COUNTY.

3 E. Phase 5, Construction Documents:

4 The Consultant shall:

5 1. Prepare final working drawings from preliminary plans, as modified by the County, on  
6 a CAD system acceptable to the COUNTY (such as DataCAD Version 10 or AutoCAD Version 2004)  
7 and on 30" by 42" (maximum size) sheets, or other size approved by COUNTY, drawing size sheets  
8 and technical specifications shall be on 8-1/2" by 11" pages setting forth in detail the work to be done,  
9 the materials, workmanship, finishes, and equipment required for the mechanical, electrical, plumbing  
10 and other components of construction necessary to provide the COUNTY a complete and functional  
11 project for its intended purpose.

12 2. Prepare construction specifications in CSI/ UCI 16 division format with an IBM PC-  
13 compatible word processing program fully compatible with Microsoft Word or WordPerfect.

14 3. Include in the specifications a construction sequencing of work. COUNTY's project  
15 committee shall review and approve the schedule prior to completing the final construction  
16 documents.

17 4. Review, comment, and/or make recommendations on the form and content of the  
18 COUNTY's General Conditions, Special Conditions, and Bid Form as they apply to the project.

19 5. In addition to the technical specifications, prepare special or supplemental conditions  
20 for the construction contract, including a Health and Safety Plan. The COUNTY will package the  
21 Consultant's documents with the COUNTY's approved General Conditions, Notice to Contractors  
22 calling for bids, the Bid Form, and related documents to complete the construction contract and bid  
23 specifications.

24 6. Monitor and keep COUNTY informed regarding the impact of design issues on the  
25 project budget. Upon the request of the COUNTY, Consultant shall incorporate into the design such  
26 reasonable changes as the CONSULTANT deems appropriate as a result of the COUNTY's review

processes and impact on the project budget or opinion of probable construction cost.

7. Submit to the COUNTY a final opinion of probable construction cost in the CSI/UCI 16 division format for the base bid work and alternate bid items. The opinion of probable construction cost shall be projected to the midpoint of the scheduled construction period to be approved by the COUNTY. Differences between the design development (preliminary) and final opinion of probable construction cost shall be explained in writing.

8. Not proceed with the next Phase unless expressly authorized in writing by COUNTY.

9. Develop scope of an independent testing and quality assurance program for the project.

F. Phase 6, Bidding and Award:

The Consultant shall:

1. Deliver to the County two (2) weeks prior to the advertising date (which date will be determined by COUNTY), the final completed and approved original drawings and specifications for COUNTY printing and distribution of bid sets to interested contractors. The original drawings and specifications index sheet shall be stamped by a seal with CONSULTANT and subconsultants' license numbers and/or signed in accordance with the California Business and Professions Code and have been approved by all applicable regulating agencies.

2. Submit a list of general and specialty contractors who may be interested in bidding on this project.

3. Attend the pre-bid conference scheduled by the COUNTY.

4. Prepare addendum drawings and other documents as required to clarify scope of work to be bid upon at no additional cost to the COUNTY. Coordinate subconsultants' addendum drawings and documents.

5. Prepare drawings and work necessary to delineate either the COUNTY's changes in scope to the contract or changes in job-site conditions due to inaccurate information provided by the COUNTY. Such work shall be provided as directed by the COUNTY representative and shall be an Extra Service to the Consultant's agreement.

1           6. Submit to the COUNTY for review and approval any addenda deemed necessary.  
2 Addenda, if any, shall be submitted no later than ten (10) working days prior to the scheduled bid  
3 opening. The addendum shall be distributed by the COUNTY. An electronic copy of addenda items  
4 shall be furnished to the COUNTY. No addendum will be issued in the 72 hour period prior to bid  
5 opening.

6           7. Assist the COUNTY in evaluating the base bids and alternate bid items received.  
7 Analyze variances between the approval final estimate and the apparent low bid received prior to the  
8 COUNTY's development of the award agenda item.

9           8. Delete or otherwise change portions of the construction work at the request of the  
10 COUNTY if the lowest bid proposal for the proposed construction contract exceeds the COUNTY  
11 approved opinion of probable construction cost (which will include the CONSULTANT's design  
12 contingency amount approved by the COUNTY) by 10% or more, and if the COUNTY rejects all bids.  
13 In such event, the Consultant shall revise the plans and specifications to comply with such  
14 modifications and also shall assist the County in obtaining new proposals from contractors, all at no  
15 additional cost to the County. Such modifications shall be completed on a time schedule  
16 commensurate with the scope of the change and as set forth by the County.

17           G. Phase 7, Construction Observation:

18           The CONSULTANT shall:

- 19           1. Attend pre-construction conference scheduled by the COUNTY.
- 20           2. Provide limited construction observation including but not limited to:
- 21               a. Make recommendations to the COUNTY on all claims of the COUNTY or  
22 construction contractor (hereinafter called "Contractor") and all other matters relating to the execution  
23 and progress of work, including interpretation of the CONSULTANT's contract documents.
- 24               b. Within two (2) working days of COUNTY's request for information (RFI), respond  
25 to the County Construction Engineer or Contractor, through the County Construction Engineer, with  
26 information and/or drawing needed from CONSULTANT in order to clarify the intent of the

1 construction contract plans and specifications of the project. CONSULTANT shall review  
2 Contractor's cost proposal for all change orders associated with any additional work as may be  
3 necessary by the RFI clarification.

4 c. Except for color boards, within seven (7) working days of COUNTY's request,  
5 review and make recommendations for samples, schedules, shop drawings, and other submissions for  
6 general conformance with the design concept of the project and for general compliance with the plans  
7 and specifications and information given by the CONSULTANT's contract documents.

8 d. Recommend and assist in the preparation of necessary change orders, with  
9 supporting documentation, calculations and opinion of probable construction cost, for review and  
10 issuance of change orders by the County Construction Engineer to obtain appropriate agency  
11 acceptance and approval.

12 (1) Provide drawings and work necessary to delineate the COUNTY's changes in  
13 scope of the construction contract or to make modifications as directed by the Board of Supervisors,  
14 which shall be made as directed by the Construction Engineer and shall be compensated as an Extra  
15 Service.

16 (2) Notwithstanding the forgoing, where the change order arises as a result of a  
17 negligent error, act or omission of the CONSULTANT, the Consultant shall not be compensated as  
18 an Extra Service for time spent or cost incurred in efforts connected with the correction thereof. The  
19 cost of rework of installed work shall be assessed upon the CONSULTANT's contract payments.

20 (3) Any changes to the construction contract shall be made only with written  
21 COUNTY approval.

22 3. At intervals appropriate to the stage of construction as requested by the Construction  
23 Manager, or as otherwise deemed necessary, visit the project construction site as may be necessary  
24 to become familiar generally with the progress and quality of the work and to determine that the work  
25 is proceeding in general accordance with the contract documents.

26 4. Review all field testing reports and make recommendations to accept, retest or reject.

1           5. Based on the Consultant's visits to the site, CONSULTANT shall keep the COUNTY  
2 informed through written reports as to the progress of the work, shall endeavor to advise the COUNTY  
3 of defects and deficiencies observed in the work of contractors, and may recommend that the  
4 COUNTY reject work as failing to conform to the contract documents.

5           6. Based upon his limited observations of the progress of construction and the  
6 Contractor's application for payment, assist the Construction Inspector in determining on a monthly  
7 basis, the amount owing to the Contractor under the contract documents and recommend, through  
8 appropriate certificates, payments on such amounts. Such certificates shall construct a representation  
9 to the COUNTY that the work has progressed to the point indicated and that to the best of the  
10 Consultant's knowledge, information and belief, the quality of the work is in accordance with the  
11 contract documents.

12           7. Conduct site visits which shall include but not be limited to on-site inspections to  
13 determine the dates of substantial completion and final completion and to recommend to the COUNTY  
14 its acceptance to the of the work, for the filing of the notice of completion and issuance of final  
15 certificate of payment.

16           8. Conduct a "project review and evaluation" of all the building's systems, mechanical,  
17 plumbing, security electronics, public address system, fire alarm, etc. and maintenance staff  
18 orientation for the completed project.

19           9. Not charge for the costs of drawings, engineering and other work and expenses  
20 necessary to correct negligent errors, acts and omissions and other inaccuracies attributed to the  
21 CONSULTANT's design work.

22           10. Prior to and during the installation of library furniture and shelving, consultant and  
23 his/her interior designer shall verify that the furniture provided and its installation meets the design  
24 plans and furniture and shelving specifications.

25           H. Phase 8, Post Construction:

26           The CONSULTANT shall:

1           1. Review and forward to the County Construction Engineer four (4) copies and an  
2 electronic version on CD ROM of Operations and Maintenance Manuals to be furnished by the  
3 Contractor.

4           2. Inform the County of all written guarantees required of the Contractor by the  
5 Consultant's technical specifications or special conditions.

6           3. Return to the County all plans borrowed from COUNTY.

7           4. Require through the construction contract specification that record drawings be  
8 prepared by the Contractor and submitted to the COUNTY for acceptance by the construction  
9 inspector and Consultant. However, upon completion of the project, Consultant shall transfer the  
10 Contractor's record drawing changes onto the Consultant's original electronic files and provide the  
11 COUNTY with complete electronic files of the project. The complete record drawing set shall remain  
12 at all times the property of the COUNTY. Changes shall identify date of change and its source, such  
13 as from addenda, change order or clarification. The CONSULTANT shall make one (1) set  
14 reproducible "record" drawings and make one (1) record print set and deliver both "record" drawings  
15 and "record" prints to the Department of Public Works and Planning. CONSULTANT shall have no  
16 responsibility for the accuracy of information provided, either by the Contractor or by the construction  
17 inspector, for transfer to record drawings.

18           5. Participate fully, aligned with and not adverse to the interests of the COUNTY, upon  
19 request, in the early settlement discussions of construction claims resolution issues. Participation in  
20 this process does not preclude the COUNTY's right to make a negligent error and omissions claim  
21 against the CONSULTANT. In the event such participation is requested of CONSULTANT,  
22 CONSULTANT shall be paid for such services as provided under the Extra Services provisions of  
23 Article V Section C of this Agreement for the time spent in such participation. All provisions of  
24 Article III Section G of this Agreement shall apply to CONSULTANT's participation in any early  
25 settlement discussions required by this section.

26           6. Provide construction plans prepared with a CAD system, record drawings in the form



1 of .dxf or .dwg files and reproducibles that shall be furnished and delivered to Department of Public  
2 Works and Planning. Such .dxf or .dwg files shall be furnished on either 100 MB 'Zip' disks or  
3 compact disk (CD-ROM). Final plans and specifications become the property of the COUNTY and  
4 can be used by the COUNTY at its own discretion.

5 7. No final payment to the CONSULTANT will be issued until the services of this Phase  
6 have been performed and negligent errors, acts and omissions attributed to the CONSULTANT have  
7 been resolved.

#### 8 **IV. COUNTY'S OBLIGATIONS:**

9 The COUNTY will:

10 A. Compensate the CONSULTANT as provided in this Agreement.

11 B. Provide a "COUNTY Representative" who will represent the COUNTY and who will work  
12 with the CONSULTANT in carrying out the provisions of this Agreement. The COUNTY  
13 Representative will be the COUNTY Capital Projects Division Manager through award of the  
14 construction contract and the COUNTY Construction Engineer after award of the construction  
15 contract and through completion of construction work by the CONTRACTOR. The CONSULTANT  
16 shall communicate and coordinate with the COUNTY Representative who will provide the following  
17 services:

18 1. Prepare the title sheet for each project's plans.

19 2. Provide prints, if available, of the construction plans, calculations, and reports prepared  
20 to evaluate the buildings to be demolished. Documents shall be cosigned to the CONSULTANT shall  
21 be returned to the COUNTY upon request or project completion. The return by CONSULTANT of  
22 all loaned documents is mandatory. Final payment will not be made to CONSULTANT until all  
23 loaned documents are either accounted for or returned.

24 3. Process the site plan review application with CONSULTANT-supplied site plans,  
25 grading and drainage plans, landscape plans, floor plans, elevations, operational statement, and  
26 staffing requirements.

- 1                   4. Pay all local required plan check and project review fees.
- 2                   5. Examine documents submitted to the COUNTY by the CONSULTANT and timely
- 3 render decisions pertaining thereto.
- 4                   6. Provide communication between the CONSULTANT and COUNTY officials and
- 5 commissions (including user Department).
- 6                   7. Provide the CONSULTANT with the form of contract to be entered into between the
- 7 COUNTY and CONTRACTOR, including the COUNTY's General Conditions, Notice To Contractors
- 8 calling for bids, Bid Form, and related COUNTY documents.
- 9                   8. Pay for the reproduction costs of printing the final bidding and construction documents.
- 10                  9. Provide a construction inspector for continuous inspection as hereinafter provided.
- 11                  10. Retain, when required an independent testing laboratory to provide necessary soils,
- 12 structural, chemical, mechanical, air balance, electrical or other tests and reports as may be required
- 13 to assure quality control and construction compliance with the plans and specifications. COUNTY
- 14 may elect, at its option, to assign this task to CONSULTANT as an Extra Service under Section V.C.
- 15                  11. Provide a construction inspector to review and accept CONTRACTOR's record
- 16 drawings for completeness and forward this set to CONSULTANT.
- 17                  12. Provide construction contract administration services, which services shall include, but
- 18 may not be limited to:
- 19                   a. Conducting the pre-construction conference.
- 20                   b. Issuing the Notice to Proceed to the CONTRACTOR.
- 21                   c. Authorizing and making progress payments.
- 22                   d. Authorizing and issuing contract change orders.
- 23                   e. Authorizing supplemental fund payments.
- 24                   f. Accepting the project and issuing the Notice of Completion.
- 25                  13. Give reasonably prompt consideration to all matters submitted by the CONSULTANT
- 26 for approval to the end that there will be no substantial delays in the CONSULTANT's program of

work. An approval, authorization or request to the CONSULTANT given by the COUNTY will be binding upon the COUNTY under the terms of this Agreement only if it is made in writing and signed on behalf of the COUNTY by the COUNTY Representative or a designee.

14. Employ a Construction Inspector of Record and such assistants as may be required.

The Construction Inspector of Record and his/her assistants shall have the right to monitor every part of the construction work by personally inspecting the same. The Construction Inspector of Record will work with the CONSULTANT and will immediately call to the attention of the CONSULTANT and COUNTY Representative in writing all inconsistencies or other errors in the plans and specifications or departure therefrom in the work. In case of the Construction Inspector of Record's doubt as to the proper interpretation of plans and specifications, the Construction Inspector of Record shall obtain the CONSULTANT's interpretation thereof. The CONSULTANT shall communicate to the CONTRACTOR only through the COUNTY Representative.

#### **V. COMPENSATION:**

##### **A. Total Fee:**

Notwithstanding any other provisions in this Agreement, the Total Fee (Basic Fee plus Extra Services Allocation) for the services required under this Agreement shall be the total sum of \$\_\_\_\_\_.

##### **B. Basic Fee:**

1. Notwithstanding any other provisions in this Agreement, the Basic Fee for Component I services required under Article III that includes Phase, 1, Needs Assessment and Financing Sources Investigation, Phase 2, Building Program / Conceptual Design and Site Plan, and Phase 3, Schematic Design shall not exceed the total sum of \$\_\_\_\_\_. (By Amendment) The Basic Fee for Component II services required under Article III that includes Phase 4, Design Development, Phase 5, Construction Documents, Phase 6, Bidding and Award, Phase 7, Construction Observation, and Phase 8, Post Construction shall not exceed a total sum of \$\_\_\_\_\_.

2. All expenses incidental to CONSULTANT's performance of services under Article III

of this Agreement shall be borne by CONSULTANT. Incidental expenses include, but may not be limited to, transportation and travel, postage and courier services, photo and duplicating services, telephone and facsimile charges, computer storage media, drawing and plotting media, printing of "check print" plans and plan sets and documents specifically required by the provisions of Article III. of this Agreement.

3. Within the Total Fee limitation described in Section V.A. above, the Basic Fee shall be divided as follows for purposes of payment scheduling:

Component I

Phase 1 – Needs Assessment and Financing Sources Inv.	20%
Phase 2 – Building Program/Conceptual Design and Site Plan	40%
Phase 3 – Schematic Design/Financing Study/ Project Estimate	40%
Total	100%

Component II (By Amendment)

Phase 4 – Design Development	30%
Phase 5 – Construction Documents	45%
Phase 6 - Bidding and Award	5%
Phase 7 - Construction Observation	15%
Phase 8 - Post Construction	5%
Total for Component II (Negotiated)	100%

C. Extra Services:

1. There will be an additional maximum allocation of \$\_\_\_\_\_ to pay for authorized Extra Services. Payment of Extra Services in excess of \$\_\_\_\_\_ is unauthorized and can only be made pursuant to a prior written amendment to this Agreement.

2. The CONSULTANT shall not undertake any Extra Services without the advance authorization of the COUNTY Representative. The CONSULTANT and the COUNTY shall expressly confirm in writing the authorization and maximum cost for any such services before the

CONSULTANT is compensated for any work thereon. CONSULTANT shall not add markup percentages or costs to subconsultant's costs unless expressly authorized in writing by the COUNTY

3. Payment for Extra Services will be at the hourly and cost rates set forth in Exhibit A, attached hereto and incorporated herein. The rates listed therein are in effect for the duration of the Agreement. Such rates for Extra Services may be renegotiated annually at CONSULTANT's request, if this Agreement is in effect longer than one (1) year. CONSULTANT's request for annual rate adjustment shall correspond with the Engineering News Record's Construction Cost Index or the Consumer Price Index.

4. All expenses incidental to CONSULTANT's performance of Extra Services under this Agreement shall be borne by CONSULTANT. Incidental expenses include, but may not be limited to, transportation and travel, postage and courier services, photo and duplicating services, telephone and facsimile charges, computer storage media, and documents specifically required by the provisions of this Agreement.

5. The following are consultant services that are considered as not included in Article III herein, but may be required as Extra Services.

a. Providing construction observation services when construction exceeds sixty (60) days beyond the original construction contract schedule as adjusted for weather delays and as adjusted for delays by CONSULTANT-caused change orders, negligent errors, or omissions.

b. Conveying or transmitting construction documents for agency approval when the CONSULTANT is granted prior authorization by the COUNTY.

c. Making changes to documents that are ordered by the COUNTY subsequent to COUNTY approval thereof.

d. Preparing change orders when the project scope is changed on the basis of COUNTY-initiated requests, and such changes are not a result of negligent errors, acts, or omissions by the CONSULTANT.

e. If necessary, advising and assisting the COUNTY with respect to any settlement

1 or litigation arising out of any failure of the CONTRACTOR to fully perform the construction contract  
2 in accordance with the contract documents.

3 f. Performing a visual inspection, within one year following the date of substantial  
4 completion (if requested by the COUNTY, and reporting in writing on detectable defects in  
5 workmanship or material.

6 g. Providing interior design services.

7 h. Providing unforeseen, extraordinary, or unique services or items not covered nor  
8 normally included in the Basic Fee, but authorized by the COUNTY Representative.

9 i. If requested by COUNTY, as provided for in Section IV.B.10., to retain, when an  
10 independent testing laboratory to provide necessary soils, chemical, structural, mechanical, electrical  
11 or other tests and reports as may be necessary to assure quality control and construction compliance  
12 with the plans and specifications.

13 j. Conduct a commissioning of all the building's mechanical, plumbing, electrical,  
14 security electronics, and other systems and conduct a building maintenance staff orientation for the  
15 completed project.

16 k. Providing those items under Article III which are identified as Extra Services.

17 6. If the CONSULTANT becomes aware of potential unforeseen expenses that would not  
18 be covered by the Basic Fee provisions of this Agreement or by the Extra Services provisions set forth  
19 in this Article V., Section C., CONSULTANT shall inform the COUNTY in writing of the extent and  
20 nature of such expenses or services. Upon mutual agreement of the CONSULTANT and the  
21 COUNTY, this Agreement may be amended in writing to cover such unforeseen expense or cost of  
22 Extra Service.

23 7. In the event the COUNTY Representative expressly authorizes Extra Services,  
24 CONSULTANT shall keep complete records showing the hours and description of activities worked  
25 by each person who works on the project and all costs and charges applicable to the Extra Services  
26 work so authorized. Should there be a claim for Extra Services, the CONSULTANT understands and

1 agrees that he or she must specifically identify the activity, performer of the activity, reason for the  
2 activity, and COUNTY official requesting the activity, or the claim will be denied. CONSULTANT  
3 shall be responsible for all subconsultants keeping similar records. The CONSULTANT shall not stop  
4 the work, including the design in other areas unrelated to the Extra Services request or claim, unless  
5 it is shown the project design cannot proceed while a claim or request for Extra Services is being  
6 evaluated.

7 D. Payments:

8 1. Progress payments will be made by the COUNTY upon receipt of the  
9 CONSULTANT's monthly invoices and approval by COUNTY thereof, based on the COUNTY's  
10 evaluation of the completion of the respective components of the projects(s). Invoices shall clearly  
11 identify the project name, phase of work, description of work, percentage of phase completed and shall  
12 be submitted with the documentation identified in Article V. Section D. Paragraph 5 below.  
13 CONSULTANT shall submit separate invoices for Extra Services, accompanied with copies of any  
14 subconsultant's invoices and costs for approved incidentals.

15 a. Invoices for Phase 1, Needs Assessment / Financing Sources Investigation, Phase  
16 2, Review and evaluation of an existing Building Program / Conceptual Design and Site Plan, Phase  
17 3, Schematic Design / Financial Study / Project Estimate, Phase 4, Design Development, Phase 5,  
18 Construction Documents, Phase 6, Bidding and Award shall be forwarded to:

19 Stuart G. Seiden, Capital Projects Division Manager  
20 Fresno County Department of Public Works and Planning  
21 2220 Tulare Street, 6th floor  
22 Fresno, CA 93721-2106

23 b. Invoices for Phase 7, Construction Observation and Phase 8, Post Construction  
24 shall be forwarded to:

25 Robert Shonkwiler, Construction Engineer  
26 Fresno County Department of Public Works and Planning  
2220 Tulare Street, 6th Floor

2. Upon receipt of a proper invoice, the COUNTY Department of Public Works and Planning will take a maximum of five (5) working days to review, approve, and submit it to the COUNTY Auditor-Controller/Treasurer-Tax Collector. Unsatisfactory or inaccurate invoices will be returned to the CONSULTANT for correction and resubmittal. Payment, less retention, will be issued to CONSULTANT within twenty-five (25) calendar days of the date the Auditor-Controller/Treasurer-Tax Collector receives the approved invoice.

3. COUNTY is entitled to and shall withhold a ten percent (10%) retention from the earned compensation in accordance with the provisions of Article VII of this Agreement.

4. An unresolved dispute over a possible negligent error or omission may cause payment of CONSULTANT fees in the disputed amount to be withheld by the COUNTY.

5. Concurrently with the invoices, the CONSULTANT shall provide its certification acceptable to the COUNTY, and shall provide, on COUNTY request, copies of issued checks, receipts, or other COUNTY pre-approved documentation, that complete payment, less a ten percent (10%) retention, has been made by CONSULTANT to all subconsultants as provided herein for all previous invoices approved by the COUNTY, and that CONSULTANT has complied with state wage and work hour laws and regulations. However, the parties do not intend that the foregoing creates in any subconsultant or subcontractor a third party beneficiary status or third party beneficiary rights, and expressly disclaim any such status or rights.

6. Final invoice, and separate invoice for retentions, shall be submitted to COUNTY no later than thirty (30) days after the project is completed. The CONSULTANT shall provide its certification acceptable to the COUNTY, on COUNTY request, that all subconsultants have received full payment for services rendered and work performed on the project. Payment for retentions shall not be made until all post-construction services are completed in accordance with the provisions of Article III, Section \_\_\_\_ (Post Construction) of this Agreement, including but not limited to record drawings approval, operation and maintenance manual review, and furnishing of required reports.



1           7. In the event the COUNTY reduces the scope of the project, the CONSULTANT will  
2 be compensated on a pro rata basis for actual work completed and accepted by the COUNTY in  
3 accordance with the terms of this Agreement.

4           8. In the event start of component II work is delayed beyond six (6) months after the  
5 completion of component I work COUNTY will release the accumulated retention withheld from the  
6 component I earned compensation.

7           **E. COMPENSATION RECORDS**

8           The CONSULTANT shall keep complete records showing the hours and description of  
9 activities performed by each person who works on the project and all associated costs or charges  
10 applicable to work covered by the Basic Fee and approved Extra Services. The CONSULTANT  
11 additionally shall be responsible for all sub-consultants keeping similar records. The CONSULTANT  
12 shall maintain all such records for a period of three (3) years following final payment under this  
13 Agreement, consistent with the provisions of Article VIII. Section C.

14           **VI. COMPENSATION RECORDS**

15           The CONSULTANT shall keep complete records showing the hours and description of  
16 activities performed by each person who works on the Project and all associated costs or charges  
17 applicable to work covered by the Basic Fee and approved Extra Services. The CONSULTANT  
18 additionally shall be responsible for all sub-consultants keeping similar records. The CONSULTANT  
19 shall maintain all such records for a period of three (3) years following final payment under this  
20 Agreement, consistent with the provisions of Article VIII, Section C.

21           **VII. RETENTION FROM EARNED COMPENSATION:**

22           A. In addition to any amounts withheld under Article III. Section G [Construction Observation  
23 Phase], COUNTY is entitled to and shall withhold a ten percent (10%) retention from the earned  
24 compensation of the CONSULTANT. Such retention from earned compensation shall be applied to  
25 all phases of the consultant services to be provided under this Agreement, including those phases  
26 completed and Extra Services.

1 B. At the request and expense of the CONSULTANT, securities equivalent to the amount  
2 withheld shall be deposited with the COUNTY or with a state or federally chartered bank in California  
3 as the escrow agent, in accordance with Section 22300 of the California Public Contract Code,  
4 attached hereto as Exhibit B and incorporated herein, which provides for the substitution of securities  
5 for any moneys withheld by a public agency to ensure performance under a contract. If such request  
6 is made by the CONSULTANT, the escrow agreement shall be prepared by CONSULTANT in  
7 compliance with the above-referenced statute and it may be executed by the Director of the  
8 Department of Public Works and Planning.

9 C. When the construction contract has been satisfactorily performed to the eighty percent  
10 (80%) point of completion without major pending claims, disputes or other matters in question  
11 between the parties, the COUNTY may, at its discretion, reduce the retention from ten percent (10%)  
12 to five percent (5%), and the resulting surplus funds, less any current-phase or Extra Service retention,  
13 will be paid by COUNTY to CONSULTANT at that time. The final retention of five percent (5%)  
14 will be paid in accordance with the payment provisions of this Agreement and upon receipt of proper  
15 invoice, within forty-five (45) days after completion of all of CONSULTANT's obligations under this  
16 Agreement, including the resolution of all claims and disputes between COUNTY and  
17 CONSULTANT.

#### 18 **VIII. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:**

19 A. The CONSULTANT shall use established accounting and bookkeeping practices,  
20 including but not limited to, employee time cards, payrolls, and other records of transactions, in order  
21 to ensure appropriate documentation for all payments made hereunder, including those made from  
22 State Grant and Federal Grant (HUD/CDBG) funds.

23 B. The CONSULTANT shall at any time during regular business hours, and as often as the  
24 COUNTY may deem necessary, make available for examination by Federal or State of California  
25 authorities, or the COUNTY Auditor-Controller/Treasurer-Tax Collector, or their authorized  
26 representatives, all of CONSULTANT's records and data with respect to matters covered by this

1 Agreement. The CONSULTANT shall permit Federal, State of California, or COUNTY authorities  
2 to audit and inspect all invoices, materials, payrolls, records of personnel, conditions of employment,  
3 and other data relating to matters covered by this Agreement.

4 C. The CONSULTANT shall be subject to the examination and audit of the Auditor General  
5 for a period of three (3) years after final payment under this Agreement (Government Code Section  
6 8546.7)

7 **IX. ERRORS OR OMISSION CLAIMS AND DISPUTES:**

8 A. Definitions:

9 1. A "Consultant" is a duly licensed Architect or Engineer, or other provider of  
10 professional services, acting as a business entity (owner, partnership, corporation, joint venture or  
11 other business association) in accordance with the terms of an Agreement with the COUNTY.

12 2. A "Claim" is a demand or assertion by one of the parties seeking, as a matter of right,  
13 adjustment or interpretation of contract terms, payment of money, extension of time, change orders,  
14 or other relief with respect to the terms of the contract. The term "Claim" also includes other disputes  
15 and matters in question between the COUNTY and CONSULTANT arising out of or relating to the  
16 contract. Claims must be made by written notice. The provisions of Government Code section 901,  
17 et seq., shall apply to every claim made to COUNTY. The responsibility to substantiate claims shall  
18 rest with the party making the claim. The term "Claim" also includes any allegation of an error or  
19 omission by the CONSULTANT.

20 B. In the spirit of cooperation between the COUNTY and CONSULTANT, the following  
21 procedures are established in the event of any claim or dispute by the COUNTY or CONSULTANT  
22 alleging a negligent error, act, or omission.

23 1. Claims, disputes or other matters in question between the parties, arising out of or  
24 relating to this Agreement, shall not be subject to arbitration, but shall be subject to the following  
25 procedures.

26 2. The project manager of COUNTY and CONSULTANT shall meet and confer and

1 attempt to reach agreement on any dispute, including what damages have occurred, the measure of  
2 damages and what proportion of damages, if any, shall be paid by either party. The parties agree to  
3 consult and consider the use of mediation or other form of dispute resolution prior to resorting to  
4 litigation.

5 3. If the COUNTY and CONSULTANT cannot reach agreement under the immediately  
6 preceding paragraph IX. Section B. Paragraph 2, the disputed issues may, upon concurrence by all  
7 parties, be submitted to a panel of three (3) for a recommended resolution. The CONSULTANT and  
8 the COUNTY shall each select one (1) member of the panel, and the third member shall be selected  
9 by the other two panel members. The discovery rights provided by California Code of Civil Procedure  
10 for civil proceedings shall be available and enforceable to resolve the disputed issues. Either party  
11 requesting this dispute resolution process shall, when invoking the rights to this panel, give to the  
12 other party a notice describing the claims, disputes and other matters in question. Prior to 20 days  
13 before the initial meeting of the panel, both parties shall submit all documents such party intends to  
14 rely upon to resolve such dispute. If it is determined by the panel that any party has relied on such  
15 documentation, but has failed to previously submit such documentation on a timely basis to the other  
16 party, the other party shall be entitled to a 20-day continuance of such initial meeting of the panel.  
17 The decision by the panel is not a condition precedent to arbitration, mediation or litigation.

18 4. Upon receipt of the panel's recommended resolution of the disputed issues, the  
19 COUNTY and the CONSULTANT shall again meet and confer and attempt to reach agreement. If  
20 the parties still are unable to reach agreement, each party shall have recourse to all appropriate legal  
21 and equitable remedies.

22 C. The procedures to be followed in the resolution of claims and disputes may be modified  
23 at any time by mutual agreement of the parties hereto.

24 D. The CONSULTANT shall continue to perform its obligations under this Agreement  
25 pending resolution of any dispute, and the COUNTY shall continue to make payments of all  
26 undisputed amounts due under this Agreement.

1 E. When a claim by either party has been made alleging the CONSULTANT's negligent error,  
2 act, or omission, the COUNTY Project Manager and the CONSULTANT shall meet and confer within  
3 twenty-one (21) days after the written notice of the claim has been provided.

4 **X. JOINDER OF PARTIES**

5 The CONSULTANT, the CONSULTANT's consultants of any tier, subcontractors of any tier,  
6 suppliers and construction lenders shall all be bound by the dispute resolution provisions of this  
7 Agreement, and immediately upon demand of COUNTY or CONSULTANT, shall participate in and  
8 shall become parties to the dispute resolution process, provided they have signed any document that  
9 incorporates or refers to the dispute resolution provisions of this Agreement. Failure of  
10 CONSULTANT, whether intended or inadvertent, to ensure that such nonparties have signed such a  
11 document shall inure only to CONSULTANT's detriment, if any there be. COUNTY shall not suffer  
12 a detriment by CONSULTANT's action or inaction in this regard. If such a party after due notice fails  
13 to appear at and participate in the dispute resolution proceedings, the panel established in accordance  
14 with the provisions of paragraph IX Section B Paragraph 3. shall make a decision based on evidence  
15 introduced by the party or parties who do participate.

16 **XI. CONSULTANT'S OBLIGATIONS RELATING TO CONSTRUCTION CLAIMS**

17 A. The CONSULTANT will review and analyze construction contract claims and recommend  
18 resolution of them as soon as possible following receipt of demand by COUNTY.

19 B. Within a reasonable time after receipt of a claim, the CONSULTANT shall provide a  
20 written analysis of the claim to the COUNTY, signed by the CONSULTANT and any affected sub-  
21 consultants. The written analysis shall include the CONSULTANT's professional opinion of the  
22 responsibility for payment of the claim, with supporting facts and documentation. A copy of the  
23 written analysis shall be provided to the respective insurance adjusters for CONSULTANT and any  
24 affected sub-consultant.

25 C. Upon receipt of a claim, the CONSULTANT may also take one (1) or more of the  
26 following actions, within ten (10) days of receipt of a claim:

1           1. Request additional supporting data from the claimant, requiring that such data be  
2 supplied within ten (10) days of the request;

3           2. Submit a schedule to the parties indicating when the CONSULTANT expects to  
4 respond to the claim, which schedule shall not exceed thirty (30) days from CONSULTANT's original  
5 receipt of the claim;

6           3. Recommend rejection of the claim in whole or in part, stating the reasons for such  
7 rejection;

8           4. Recommend approval of the claim by the other party, or

9           5. Suggest a compromise.

10          D. In every case, CONSULTANT shall provide its recommended resolution of a claim within  
11 thirty (30) days from the original receipt of claim, unless the CONSULTANT obtains COUNTY's  
12 prior written approval.

## 13   **XII. INDEPENDENT CONTRACTOR:**

14          A. In performance of the work, duties, and obligations assumed by CONSULTANT under this  
15 Agreement, it is mutually understood and agreed that CONSULTANT, including any and all of  
16 CONSULTANT's officers, agents and employees, will at all times be acting and performing as an  
17 independent contractor, and shall act in an independent capacity and not as an officer, agent, servant,  
18 employee, joint venturer, partner or associate of the COUNTY. Furthermore, COUNTY shall have  
19 no right to control or supervise or direct the manner or method by which CONSULTANT shall  
20 perform its work and function. However, COUNTY shall retain the right to administer this Agreement  
21 so as to verify that CONSULTANT is performing its obligations in accordance with the terms and  
22 conditions thereof. CONSULTANT and COUNTY shall comply with all applicable provisions of law  
23 and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the  
24 subject thereof.

25          B. Because of its status as an independent contractor, CONSULTANT shall have absolutely  
26 no right to employment rights and benefits available to COUNTY employees. CONSULTANT shall

1 be solely liable and responsible for providing to, or on behalf of its employees all legally-required  
2 employee benefits. In addition, CONSULTANT shall be solely responsible and save COUNTY  
3 harmless from all matters relating to payment of CONSULTANT's employees, including compliance  
4 with Social Security, withholding, and all other regulations governing such matters. It is  
5 acknowledged that during the term of this Agreement CONSULTANT may be providing services to  
6 others unrelated to the COUNTY or to this Agreement.

7 **XIII. PARTIES BOUND BY AGREEMENT:**

8 This Agreement shall be binding upon the COUNTY, the CONSULTANT, and their  
9 successors in interest, legal representatives, executors, administrators, and assigns with respect to all  
10 covenants as set forth herein.

11 **XIV. REQUIRED APPROVALS:**

12 It is understood that the CONSULTANT shall not assign, sublet, subcontract, or transfer any  
13 of CONSULTANT's rights, duties, or obligations under this Agreement, without the prior express,  
14 written consent of the COUNTY. Such consent and approval may be given only by the COUNTY  
15 Board of Supervisors.

16 **XV. COMPLIANCE WITH LAWS:**

17 A. CONSULTANT shall comply with all applicable federal, state, and local laws, ordinances,  
18 regulations, and Fresno County Charter Provisions in effect at the time of CONSULTANT's  
19 performance of the professional services to be provided hereunder.

20 B. CONSULTANT shall also comply with current rules and regulations established pursuant  
21 to the federal Housing and Development Act of 1974 and its amendments including, but not  
22 necessarily limited to, those requirements listed in Exhibit C, attached hereto and incorporated herein.

23 **XVI. GOVERNING LAW:**

24 A. Any controversy or claim arising out of or relating to this Agreement which cannot be  
25 amicably settled without court action shall be litigated either in a state court for Fresno County,  
26 California, or in the U.S. District Court for the Eastern District of California, located in Fresno

1 County.

2 B. The rights and obligations of the parties and all interpretations and performance of this  
3 Agreement shall be governed in all respects by the laws of the State of California.

4 **XVII. AMENDMENTS:**

5 Any changes to this Agreement requested either by the COUNTY or CONSULTANT may  
6 only be effected if mutually agreed upon in writing by duly authorized representatives of the parties  
7 hereto. This Agreement shall not be modified or amended, nor shall any rights of a party hereto be  
8 waived, except by such a writing.

9 **XVIII. CONSULTANT'S LEGAL AUTHORITY:**

10 [FOR CALIFORNIA CORPORATIONS:] Each individual executing this Agreement on  
11 behalf of CONSULTANT hereby covenants, warrants, and represents: (i) that he or she is duly  
12 authorized to execute and deliver this Agreement on behalf of such corporation in accordance with  
13 a duly adopted resolution of the corporation's board of directors and in accordance with such  
14 corporation's articles of incorporation or charter and bylaws; (ii) that this Agreement is binding upon  
15 such corporation; and (iii) that CONSULTANT is a duly organized and legally existing corporation  
16 in good standing in the State of California.

17 [FOR CALIFORNIA PARTNERSHIPS:] Each individual executing this Agreement on behalf  
18 of CONSULTANT hereby covenants, warrants, and represents: (i) that he or she is duly authorized  
19 to execute and deliver this Agreement on behalf of such partnership in accordance with its Partnership  
20 Agreement; and (ii) that this Agreement is binding upon such partnership; and (iii) that  
21 CONSULTANT is a duly organized and legally existing partnership in the State of California.

22 [FOR OUT OF STATE CORPORATIONS:] Each individual executing this Agreement on  
23 behalf of CONSULTANT hereby covenants, warrants, and represents: (i) that he or she is duly  
24 authorized to execute and deliver this Agreement on behalf of such corporation in accordance with  
25 a duly adopted resolution of the corporation's board of directors and in accordance with such  
26 corporation's articles of incorporation or charter and bylaws; (ii) that this Agreement is binding upon



1 such corporation; (iii) that CONSULTANT is duly organized and legally existing corporation in good  
2 standing in the State of \_\_\_\_\_, is registered with the California Secretary of State to do business  
3 in the State of California as a foreign corporation, and; (iv) that each individual executing or attesting  
4 this Agreement on behalf of CONSULTANT hereby covenants, warrants, and represents:

5 A. That this Agreement is binding upon such corporation; and

6 B. That CONSULTANT shall deliver to COUNTY all necessary certificates and assurances  
7 indicating CONSULTANT's right to conduct business in the State of California including but not  
8 limited to certificates filed with the California Secretary of State to conduct business in California and  
9 the name and California-based address of CONSULTANT's agent for receipt of service of process.

10 [FOR SOLE PROPRIETOR:] Each individual executing this Agreement on behalf of  
11 CONSULTANT, a sole proprietor, hereby covenants, warrants, and represents: (i) that he or she is  
12 duly authorized to execute and deliver this Agreement on behalf of such sole proprietor; and (ii) that  
13 this Agreement is binding upon such proprietor.

14 **XIX. HOLD HARMLESS:**

15 A. CONSULTANT shall hold harmless and indemnify and at COUNTY's request defend  
16 COUNTY, its officers, agents, and employees, against the payment of any and all costs and expenses  
17 (including reasonable attorney fees and court costs), damages, claims, suits, losses, and liability for  
18 bodily and personal injury to or death of any person or for loss of any property resulting from or  
19 arising out of any negligent or wrongful acts, errors or omissions of CONSULTANT, its officers,  
20 agents, and employees, in performing or failing to perform any work, services, or functions under this  
21 Agreement.

22 B. COUNTY and CONSULTANT hereby declare their mutual intent to cooperate in the  
23 defense of any claim, suit, or other action alleging liability, arising from the negligent performance  
24 or failure to perform of any COUNTY contractor or subcontractor in connection with the project.  
25 Such cooperation may include an agreement to prepare and present a cooperative defense after  
26 consultation with CONSULTANT's professional liability insurance carrier.

1       **XX.   LIABILITY INSURANCE:**

2           A. Prior to commencing the duties under the Agreement with the COUNTY, the  
3       CONSULTANT shall furnish the COUNTY, at no additional cost to the COUNTY, certificates for  
4       the following insurance policies which shall be kept in force at all times during the term of the  
5       Agreement (i.e., until the Agreement is terminated or it expires), and for such additional time as may  
6       be specified herein with respect to a particular type of policy.

7           1. Commercial General Liability Insurance naming the COUNTY as an additional  
8       insured, with limits of not less than \$1,000,000 per occurrence, with an annual aggregate of not less  
9       than \$2,000,000.

10          2. Comprehensive Automobile Liability Insurance with limits for bodily injury of not less  
11       than \$250,000 per person, \$500,000 per accident and for property damages of not less than \$50,000,  
12       or such coverage with a combined single limit of \$500,000.

13          3. Worker's Compensation insurance policy as required by the California Labor Code.

14          4. Project Specific Professional Liability Insurance Policy:

15           a. In the minimum amount of at least \$5,000,000 coverage per claim, with an annual  
16       aggregate of at least \$5,000,000, and with a deductible not to exceed \$50,000. A deductible greater  
17       than \$50,000 will be accepted upon the COUNTY receiving satisfactory, certified information of the  
18       CONSULTANT's ability to support such a deductible. The financial ability to support the difference  
19       between the \$50,000 and greater deductible amount requested by CONSULTANT shall be guaranteed  
20       by any of the following:

21               (1) Cash deposit with a trustee bank.

22               (2) Irrevocable letter of credit issued by a bank for a period sufficient for the  
23       COUNTY to determine if there is a claim to be made against the CONSULTANT, e.g. six months  
24       after termination of Agreement.

25               (3) Withholding payment under terms of the Agreement for the same period as  
26       under Article VII. herein.

1                   b. CONSULTANT and sub-consultants shall make full disclosure, in writing to the  
2 COUNTY, of all pending and open claims and disputes during the course of this Agreement that affect  
3 the specified aggregate limits of the Professional Liability Insurance policy.

4                   c. Project specific professional liability insurance policy shall extend for a minimum  
5 of two (2) years past the date of final payment to CONSULTANT, including the resolution of all  
6 claims, disputes, and matters in question regarding the project.

7                   d. In the event that CONSULTANT voluntarily changes, or involuntarily changes,  
8 due to circumstances beyond its control, its project specific professional liability insurance policy  
9 carrier during the period such coverage is required to be in force (as specified in the immediately  
10 preceding subparagraph XX.A.4.c), such new policy shall include prior acts coverage retroactive, at  
11 least, to the date of execution of this Agreement. CONSULTANT may, at its option and expense,  
12 purchase supplemental or "tail" coverage from the former policy carrier, negotiate a retroactive  
13 reporting date with the new policy carrier for claims incurred but not reported as of the date of change  
14 in policy carrier, and shall in any event maintain Professional Liability Insurance in a manner that  
15 provides continuous coverage to the COUNTY throughout the term of this Agreement, and for a  
16 period of three (3) years past the issuance of final payment to the CONSULTANT.

17                  e. The CONSULTANT shall, provide project specific professional liability insurance  
18 for itself and all sub-consultants for this project, extending from the beginning of Design Development  
19 Phase to three (3) years past the issuance of final payment hereunder to the CONSULTANT. This  
20 time period specifically includes that time required for the resolution of all claims and disputes.

21                  f. The CONSULTANT shall provide a vicarious interest endorsement to its  
22 professional liability insurance policy, indemnifying the COUNTY for liabilities, damages and/or  
23 judgments, and reasonable attorney's fees and related costs (a) to the proportionate extent caused by  
24 the negligent errors, acts or omissions of CONSULTANT and (b) in excess of the deductible  
25 obligation and subject to all of the terms, conditions and exclusions of the professional liability  
26 insurance policy.

1 B. All policies shall be with admitted insurers licensed to do business in the State of  
2 California. CONSULTANT shall give COUNTY at least thirty (30) days written advance notice of  
3 any expiration, cancellation or reduction in the coverage of any of the aforesaid policies. Insurance  
4 purchased shall be purchased from companies possessing a current A.M. Best, Inc. rating of B+ FSC  
5 VIII or better.

6 C. The COUNTY, its officers, agents and employees, individually and collectively, shall be  
7 named as an additional insured under the policy for Commercial General Liability Insurance, but only  
8 insofar as the operations under this Agreement are concerned. Such coverage of COUNTY as  
9 additional insured shall apply as primary insurance and any other insurance, or self-insurance,  
10 maintained by the COUNTY, its officers, agents, and employees, shall be excess only and not  
11 contributing with insurance provided under the CONSULTANT's policies herein.

12 D. In the event CONSULTANT fails to keep in effect at all times insurance coverage as  
13 herein provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate  
14 this Agreement upon the occurrence of such event.

15 **XXI. OWNERSHIP OF DOCUMENTS:**

16 A. CONSULTANT understands and agrees that COUNTY shall retain full ownership rights  
17 of the drawings and the work-product of CONSULTANT for the project, to the fullest extent permitted  
18 by law. In this regard, CONSULTANT acknowledges and agrees that CONSULTANT's services are  
19 on behalf of COUNTY and are "works made for hire," as that term is defined in copyright law, by  
20 COUNTY; that the drawings and work-product to be prepared by CONSULTANT are for the sole and  
21 exclusive use of COUNTY, and shall be the sole property of COUNTY and its assigns, and the  
22 COUNTY and its assigns shall be the sole owner of all patents, copyrights, trademarks, trade secrets  
23 and other contractual and intangible rights of any kind or nature in connection therewith; that all the  
24 contractual or intangible rights of any kind or nature, title, and interest in and to the drawings and  
25 work-product will be transferred to COUNTY by CONSULTANT, and CONSULTANT will assist  
26 COUNTY to obtain and enforce patents, copyrights, trademarks, trade secrets, and other contractual

1 and intangible rights of any kind or nature relating to said drawings and work-product; that COUNTY  
2 shall be and become the owner of such drawings and work product, free and clear of any claim by  
3 CONSULTANT or anyone claiming any right through CONSULTANT. CONSULTANT further  
4 acknowledges and agrees that COUNTY's ownership rights in such drawings and work product shall  
5 apply regardless of whether such drawings or work product, or any copies thereof, are in the  
6 possession of CONSULTANT, or any other person, firm, corporation, or entity. For the purpose of  
7 this Agreement the terms "drawings and work-product" shall mean all reports and study findings  
8 commissioned to develop the design of the project, drawings and schematic or preliminary design  
9 documents of the project, certified reproducibles of the original final construction contract drawings  
10 of the project, specifications of the project, the approved opinion of probable construction cost of the  
11 project, record drawings of the project, as-built plans of the project, and discoveries, developments,  
12 designs, improvements, inventions, formulas, processes, techniques, or specific know-how and data  
13 generated or conceived or reduced to practice or learning by CONSULTANT, either alone or jointly  
14 with others, that result from the tasks assigned to CONSULTANT by COUNTY under this  
15 Agreement. COUNTY acknowledges and agrees that details, concepts, ideas, devices, configurations,  
16 and designs previously developed or used by CONSULTANT, or developed by CONSULTANT and  
17 use is granted to COUNTY only for the specific project undertaken under this Agreement.

18 B. If the Agreement is terminated during or at the completion of the preliminary design phase  
19 under Article III, a reproducible copy of the preliminary design documents shall be submitted by  
20 CONSULTANT to the COUNTY, which may use them to complete the project in future phases.

21 C. If the project is terminated at the completion of the construction document phase of the  
22 project, the original final construction contract drawings, specifications, and approved opinion of  
23 probable construction cost shall be submitted by CONSULTANT to COUNTY.

24 D. Documents, including drawings and specifications, prepared by CONSULTANT for any  
25 project pursuant to this Agreement are not intended or represented to be suitable for reuse by  
26 COUNTY or others on extensions of the services provided for this project or any other project. Any

1 use of completed documents for other projects and/or any use of uncompleted documents will be at  
2 COUNTY's sole risk and without liability or legal exposure to CONSULTANT.

3 E. COUNTY has requested that certain machine-readable information and data ("CAD data")  
4 be provided by CONSULTANT for this project under this Agreement. Such CAD data is more  
5 specifically described in Article III. CONSULTANT shall not be liable for claims, liabilities or losses  
6 arising out of, or connected with (1) the modification or misuse by COUNTY, or anyone authorized  
7 by COUNTY, of such CAD data; or (2) decline of accuracy or readability of CAD data due to  
8 inappropriate storage conditions or duration; or (3) any use by COUNTY, or anyone authorized by  
9 COUNTY, of such CAD data for additions to this project or for the completion of this project by  
10 others, or for other projects.

11 **XXII. TIME OF COMPLETION:**

12 A. The parties hereto agree to the Production Schedule that will be developed with the  
13 building program.

14 B. CONSULTANT shall not be held responsible for delays caused by COUNTY review, or  
15 by similar reasons beyond CONSULTANT's control.

16 C. Time is of the essence in the completion of the services covered by this Agreement.  
17 Failure of the CONSULTANT to meet any specific date in the above-referenced schedule, once such  
18 failure exceeds fourteen (14) calendar days past the specified completion date (unless the delay is  
19 attributable to the COUNTY or State), is sufficient cause to immediately terminate this Agreement  
20 at the option of the COUNTY in accordance with Article XXIII.C.

21 D. Consultant shall complete all services required under this Agreement and this Agreement  
22 shall expire on \_\_\_\_\_ unless it is extended in writing by the Director of Public Works and  
23 Planning or his/her designee, or it is terminated earlier in accordance with the provisions of Article  
24 XXIII.

25 **XXIII. TERMINATION OF AGREEMENT:**

26 A. This Agreement may be terminated without cause at any time by the COUNTY upon thirty

1 (30) calendar days written notice. If the COUNTY terminates this Agreement, the CONSULTANT  
2 shall be compensated for services satisfactorily completed to the date of termination based upon the  
3 compensation rates and subject to the maximum amounts payable agreed to in Article V, together with  
4 such additional services satisfactorily performed after termination which are expressly authorized by  
5 the COUNTY Representative in order to conclude the work performed to date of termination.

6 B. If the CONSULTANT purports to terminate the Agreement, or otherwise refuses to  
7 perform pursuant to the Agreement, for reasons other than material breach by the COUNTY, the  
8 CONSULTANT shall reimburse the COUNTY, up to a maximum of \$10,000 for the actual expense  
9 of issuing a Request For Proposal (RFP), engaging a new CONSULTANT, and the new  
10 CONSULTANT's cost in becoming familiar with the previous CONSULTANT's design, in addition  
11 to any other legal or equitable remedy or expense available to the COUNTY.

12 C. The COUNTY may immediately suspend or terminate this Agreement in whole or in part,  
13 where in the determination of the COUNTY there is:

- 14 1. An illegal or improper use of funds;
- 15 2. A failure to comply with any term of this Agreement;
- 16 3. A substantially incorrect or incomplete report submitted to the COUNTY;
- 17 4. Improperly performed service.

18 D. In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of  
19 any breach of this Agreement or any default which may then exist on the part of the CONSULTANT.

20 Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect  
21 to the breach or default. The COUNTY shall have the right to demand of the CONSULTANT the  
22 repayment to the COUNTY of any funds disbursed to the CONSULTANT under this Agreement,  
23 which, in the judgment of the COUNTY and as determined in accordance with the procedures of  
24 Article IX ("Errors or Omissions Claims and Disputes"), were not expended in accordance with the  
25 terms of this Agreement. The CONSULTANT shall promptly refund any such funds upon demand.

26 E. The terms of this Agreement, and the services to be provided thereunder, are contingent

on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated at any time by giving the CONSULTANT thirty (30) days advance written notice.

**XXIV. CONFLICT OF INTEREST:**

The CONSULTANT shall comply with the provisions of the COUNTY Conflict of Interest Code, attached hereto as Exhibit D and incorporated herein. Such compliance shall include the filing of annual statements pursuant to the regulations of the State Fair Political Practices Commission.

**XXV. ENTIRE AGREEMENT:**

This Agreement constitutes the entire agreement between the COUNTY and the CONSULTANT with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement.

**XXVI. SEVERABILITY:**

Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are hereby declared to be severable.

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1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day  
2 and year first above written.

3 **CONSULTANT**

4 BY: \_\_\_\_\_  
5 TITLE: \_\_\_\_\_  
6 Street Address  
7 City, State Zip  
8 Phone  
(facsimile)  
FEDERAL ID NO.

9 REVIEWED AND RECOMMENDED  
10 FOR APPROVAL

11 BY: \_\_\_\_\_  
12 RICHARD L. BROGAN, DIRECTOR  
DEPARTMENT OF PUBLIC WORKS

13 Budgets Unit: 7530  
14 Account: 8150  
15 Program: 84746

16 SGS:jo  
17 Document2  
18 June 11, 2003

**COUNTY OF FRESNO**

BY: \_\_\_\_\_  
CHAIRMAN, BOARD OF SUPERVISORS

APPROVED AS TO LEGAL FORM  
PHILLIP S. CRONIN, COUNTY  
COUNSEL

BY: \_\_\_\_\_  
DEPUTY COUNTY COUNSEL

APPROVED AS TO ACCOUNTING  
FORM

BY: \_\_\_\_\_  
VICKI CROW  
AUDITOR-CONTROLLER/  
TREASURER-TAX COLLECTOR